

(2013) 07 PAT CK 0082
In the Patna High Court
Case No : CWJC No's. 10070 of 2007

Siya Devi Mosomat Kamlapati Devi

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 25-07-2013

Acts Referred:

Bihar State Khadi and Village Industries Act, 1956 — Section 10, 34

Citation : (2014) 1 PLJR 137

Hon'ble Judges : Rakesh Kumar, J

Bench : Single Bench

Advocate : Shambhoo Prasad Baranwal and Vishwambhar Prasad, for the Appellant; Uma Kant Singh, in 10070 and 10368, for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Kumar, J.—In both the aforesaid writ petitions, prayer of the petitioners is to grant second time bound promotion to their husbands, who were employees in Bihar State Khadi and Village Industries Board (hereinafter referred to as the "Board"). They have also prayed for directing the Respondents to pay difference of salary of the second time bound promotion. In the first case (i.e. C.W.J.C. No. 10070 of 2007), the husband of the petitioner died on 21.12.1998, while he was in service as Senior Fieldman, Brambay Sub-Station in the district of Ranchi (Jharkhand). The husband of the petitioner in the second writ petition (i.e. C.W.J.C. No. 10368 of 2007) died on 20.11.2000, while he was posted at Bee-Keeping Sub-Station of the Board at Daltonganj. The petitioners have claimed that some of the similarly situated persons were granted benefit of second time bound promotion, but in case of husbands of petitioners, discrimination has been done and, as such, according to learned counsel for the petitioners, both the writ petitions are fit to be allowed.

2. Sri Uma Kant Singh, learned counsel appearing on behalf of Respondent Nos. 2 and 3/Bihar State Khadi and Village Industries Board has vehemently opposed the prayer of the petitioners. He firstly submits that in case of first writ petition,

husband of the petitioner died in the year 1998 and petitioner has claimed second time bound promotion in respect of her husband with effect from 10.3.1989. It was argued that though the petitioner is claiming second time bound promotion in favour of petitioner with effect from 1989, fact remains that till the death of her husband, which occurred in the month of December, 1998, the husband of petitioner had never raised any such claim. Moreover, death of husband of petitioner in the first case had occurred in the year 1998 and the petitioner after about more than 17 years has approached this Court with a claim for granting second time bound promotion with effect from 1989. While referring to counter affidavit filed in the first case, he has refuted the claim of the petitioners. It has been pleaded that petitioners' husband were appointed in Bee-Keeping Scheme, which was earlier sponsored by the Khadi Commission of India. The said post was never sanctioned or approved by the State Government. Salaries for such type of employees were being paid through the fund received for execution of the Scheme. Earlier the Scheme was running smoothly and, as such, first time bound promotion was given to the employees, who were appointed under that scheme. After the fund was stopped, the Board was unable to pay even regular salary to the employees of that scheme. He has referred to Board's resolution dated 12.2.2001 i.e. Annexure-A to the counter affidavit. He has specifically referred to paragraph no. 3 of Annexure-A to the counter affidavit, which says that in view of decision of the State Government, the benefit of time bound promotion will be available to only those persons, who were working on the date of issuance of resolution i.e. 15.2.2001. He submits that even in view of Annexure-A, though amount for second time bound promotion was sanctioned, it was never paid to any of the employees even to those persons, who were employed on sanctioned post on 15.2.2001. Learned counsel for the Board has distinguished the case of the petitioners from the case of other persons regarding whom a claim has been made by petitioners that similarly situated persons had been granted the said relief. Learned counsel for the Board has referred to a counter affidavit, i.e. Annexure-B series to the present counter affidavit, which was filed in SLP (Civil) No. 3633 of 2004 before the Hon'ble Supreme Court and he has specifically referred to sub-paragraph (iii) of paragraph-8 of the counter affidavit, which is quoted hereinbelow:--

8(iii) That the Board is facing paucity of fund day to day and hence the second time bound promotion has not been given to any employee including the petitioner working and superannuated from the plan posts.

3. It was argued that husband of the petitioners were not working on sanctioned post and none of the similarly situated persons have been granted second time bound promotion and, as such, the petitioners, who have admittedly approached this Court at much belated stage, are not entitled to get any relief.

4. Learned counsel for the Board has further referred to an unreported Judgment of this Court passed in C.W.J.C. No. 5339 of 2003 and submits that the employees of the Board were not entitled to claim even pay scale suggested by

6th Fitment Committee. He submits that this Court had dealt with the matter in detail after considering Section 10 of the Bihar State Khadi and Village Industries Act, 1956 (hereinafter referred to as "the Act"), which deals with remunerations, allowances and other conditions of service and Section 34 of the Act, which provides for framing of Regulation. He submits that Judgment of this Court in C.W.J.C. No. 5339 of 2003 was approved by the L.P.A. Court in L.P.A. No. 1010 of 2003, which was disposed of on 28.9.2005. He further submits that finally it was approved by the Hon''ble Apex Court. He further submits that though the Board had resolved vide Annexure-A to the counter affidavit for giving second time bound promotion, even such resolution was not at par with the Regulation under the Act. He further submits that even for the sake of argument, if it is accepted that resolution of the Board i.e. Annexure-A to the counter affidavit, was valid, the petitioners are entitled to the claim for second time bound promotion in respect of their husbands due to the simple reason that Clause-(iii) of Annexure-A to the counter affidavit categorically speaks that the benefit of second time bound promotion was available to only those persons, who were functioning on the date of issuance of resolution dated 15.2.2001, whereas husband of petitioner in the first case died in service in the year 1998 and husband of petitioner in the second case died on 20.11.2000. Obviously before the issuance of resolution of the Board i.e. Annexure-A to the counter affidavit, which was issued on 15.2.2001. In view of the facts and circumstances, particularly the fact that learned counsel for the petitioners has not brought to the notice of this Court any valid Rules or Regulation showing grant of second time bound promotion to similarly situated persons. I do not find any merit in the present writ petition. The writ petition stands dismissed.